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Bankruptcy & Superannuation

Is it Protected?

WHAT DOES THE BANKRUPTCY ACT SAY?

Section 116(2)(d)(iii)A provides the interest of a Bankrupt in a Regulated Superannuation Fund (within the meaning of the Superannuation Industry (Supervision) Act 1993 is not divisible property in a Bankrupt Estate.

The disclaimer to the above though is that the contributions made into the Fund are done so in the ordinary course and there are not any abnormal contributions that would fall foul of the void dispositions provisions of the Bankruptcy Act which would challenge large contributions made at a time when the individual knew or should have been aware they were insolvent.

CAN THE SUPER FUNDS BE ACCESSED POST BANKRUPTCY AND DURING THE BANKRUPTCY PERIOD BY THE BANKRUPT AND REMAIN PROTECTED?

The answer to the above is yes and the funds still retain their protected status as does any property purchased with those funds. If though in the lead up to Bankruptcy an individual say accesses their Super for any reason the property purchased or benefit derived (ie increased equity in house) is not afforded any protection and that asset is available to the general body of unsecured Creditors.

DECISION OF MORRIS (BANKRUPT) V MORRIS (BANKRUPT) (2016) FCA846

The FCA's decision in the above matter reaffirmed the protected status Superannuation holds post Bankruptcy as in this case the Spouse (post Bankruptcy) received (2) two payments from her deceased Husband's (also Bankrupt) Superannuation Funds upon his passing with the query whether the protection remains (ie FCA held in favour).

This I consider is a positive decision as an alternative view would be in conflict with common sense.

2017 IN HOUSE TRAINING

As always we at Chamberlains SBR are more than open to coming to your firm and running an in house session to your middle management and staff. Should you be interested in arranging a free session do not hesitate to contact us.

As always, if you or your clients need advice on any insolvency or business turnaround matters do not hesitate to contact us.

Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate
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